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Nos. 124, 125, 126, 127, 128, 129.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

J. S. BOUNDS, ATTORNEY IN FACT FOR T. A. BOUNDS,
JOHN LONDON, WALTER S. FIELD, MADISON M.
LINDLY, J. J. BECKHAM, WILLIAM N. VERNON, AND
KATIE A. HOWE, EXECUTRIX OF THE ESTATE OF
CHESTER HOWE, DECEASED, INTERVENORS, AP-
PELLANTS,

v.

JACK AMOS AND OTHERS, KNOWN AS THE
MISSISSIPPI CHOCTAWS.

**MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT
OF THE COURT OF CLAIMS.**

Now come appellees, by the Attorney General of
the United States, and move the court to dismiss
the appeals herein, or to affirm the findings and
judgment of the Court of Claims upon the following
grounds, to wit:

1. That the Court of Claims has no jurisdiction
of the parties or the subject matter of the suit.
2. That there is no liability on the Mississippi
Choctaws as a class to pay the claims of the said
appellants.

ALEX. C. KING,
Solicitor General.

HUSTON THOMPSON,
Assistant Attorney General.

(1)

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In the Supreme Court of the United States.

J. S. BOUNDS, ATTORNEY-IN-FACT FOR T. A. Bounds, Appellant, v. JACK AMOS AND OTHERS, KNOWN AS THE Mississippi Choctaws.	}	No. 124.
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APPEALED FROM THE COURT OF CLAIMS.

BRIEF IN SUPPORT OF THE MOTION OF DEFENDANTS TO DISMISS OR AFFIRM.

STATEMENT.

' This intervening suit was brought by J. S. Bounds, attorney-in-fact for T. A. Bounds, under the act of May 29, 1908 (35 Stat. 457), for \$26,000, the alleged expenses of the removal, subsistence and identification of, and purchase of improvements, for 78 Mississippi Choctaws. This amount includes the value of personal services and expenses of the said T. A. Bounds. Judgment is asked against the individual Indians named in the schedule attached to the petition (Rec. 51-61).

T. A. Bounds was a farmer and cattleman, residing at Wortham, Tex., and about April 1, 1901, he went

(2)

to Mississippi to engage in the business of securing the identification of Mississippi Choctaws. Shortly after his arrival in Mississippi, he employed the firm of Hudson & Arnold to obtain contracts for him with individual Mississippi Choctaw claimants, under article 14 of the treaty of September 27, 1830, and he agreed to pay them \$50 for each contract secured. They secured 70 such contracts for which the said Bounds paid them, prior to August 1, 1901, the sum of \$3,500 (Rec. 121, 122).

The said Hudson and Arnold were engaged, among other things, in securing and selling contracts with individual Mississippi Choctaws claiming under Article 14 of the treaty of September 27, 1830. They dissolved partnership on August 19, 1901 (Rec. 118-121).

The said Bounds in his contracts with individual Indians agreed to secure legislation through which they could obtain their rights, and further agreed to secure their identification, removal, enrollment, and allotment as citizens of the Choctaw Nation, in consideration of a sum equal to one-half of all the lands, timber, and moneys received by said Indians, one-fourth to become due one year and three months after the date of patent or deed, one-fourth in three years and three months from said date, and the remaining one-half in five years and three months from said date. The Indians also agreed upon allotment to lease their lands to the said Bounds for a period of five years from the date of allotment,

the rents, revenues, issues, and profits to be applied to the payment of the consideration named in the contract, the Indians having the option, at any time before final payment of said consideration, of conveying to said Bounds one-half of all the lands so allotted to them (Rec. 140-142).

After securing the contracts, the said Bounds went to the Indian Territory and acquired possessory rights there through the purchase of improvements upon certain lands to enable said Indians to obtain prior allotments thereon. Between November, 1901, and July, 1903, the said Bounds removed a number of Mississippi Choctaws from Mississippi to the Indian Territory, where they were subsequently enrolled upon the final approved roll of the Choctaw Nation, and received valuable allotments of Choctaw-Chickasaw lands. The expenses of removal, including the cost of subsistence, clothing, and other incidental expenses en route, and food, shelter, and other necessary supplies after their arrival, were furnished to said Indians by the said Bounds. All of the Indians so removed repudiated their contracts with said Bounds, and a majority of them accepted allotments on lands other than those previously selected by him (Rec. 122).

ARGUMENT.

The Court of Claims, for the reasons stated in appellee's brief in case of Winton and others, No. 123, has no jurisdiction of suits against individual Mississippi Choctaws growing out of their personal

contracts with the said T. A. Bounds, and if the court had such jurisdiction there is no liability on the part of the Mississippi Choctaws as a class to pay the expenses of removal of a limited number of the class, ranging from a small sum up to a considerable amount of money.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

JOHN LONDON

v.

JACK AMOS AND OTHERS, KNOWN AS MIS-
SISSIPPI CHOCTAWS.

} No. 125.

WALTER S. FIELD AND MADISON M.
Lindly

v.

JACK AMOS AND OTHERS, KNOWN AS MIS-
SISSIPPI CHOCTAWS.

} No. 126.

APPEAL FROM THE COURT OF CLAIMS.

**BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.**

STATEMENT.

In the year 1896 and prior thereto, appellants Madison M. Lindly, Walter S. Field, and John London, were attorneys at law, residing at South McAlester, Indian Territory, Oklahoma City, Oklahoma Territory, and Alma, Arkansas, respectively (Rec. 128). The intervening suits of the said appellants were brought in the Court of Claims under the act

of May 29, 1908 (35 Stat. 457), as associates of Chester Howe. Their claim of employment was through an alleged band contract claimed to have been taken by said London and one James E. Arnold with three bands of Mississippi Choctaws residing in Mississippi, and through certain contracts taken with individual Mississippi Choctaws in Mississippi by Louis P. Hudson and James E. Arnold, doing business as Hudson & Arnold. On May 7, 1909, Lindly filed an intervening petition claiming employment by Chester Howe as an associate in the prosecution of claims of Mississippi Choctaws for citizenship in the Choctaw Nation; that he had rendered certain legal services and expended \$200. On May 17, 1906, the said Lindly filed another intervening petition claiming that he had employed Louis P. Hudson, James E. Arnold, and Woodson Arnold to secure contracts for him with individual Mississippi Choctaws and that he was associated in the business of prosecuting the claims of the Mississippi Choctaws with Chester Howe; that he had secured legislation beneficial to their rights, caused the removal of large numbers of said Indians to the Indian Territory, where they were enrolled and received allotment of Choctaw-Chickasaw lands, and in the performance of such services had had expended large sums of money (Rec. 67, 68).

Walter S. Field, after having acted as attorney for M. M. Lindly, William N. Vernon, and T. A. Bounds, intervenors in the Winton case, filed on June 9, 1910, an intervening petition in his own behalf, nearly four

years after the beginning of the suit. The said London did not file his intervening petition until February 19, 1912. A short time thereafter he gave his deposition in support of his allegations (Rec. 128).

In the fall of the year 1896 Lindly or Field drafted a band contract in duplicate in favor of M. M. Lindly, the spaces for the signatures thereto being left blank; accompanying this contract were three authorizations to certain bands or head men to represent the Mississippi Choctaws in executing said contract. In June, 1897, the contract and authorizations were delivered to John London by the said Lindly at his office at South McAlester and at the same time he advanced said London \$42 expense money. London was to go to Meridian, Mississippi, to meet James E. Arnold and procure the execution of the contract. He went to Meridian but never met James E. Arnold. A few days later in company with a sewing machine agent, a furniture peddler, and a negro interpreter, London visited various localities in Mississippi where Mississippi Choctaws lived. He found no organized tribes or bands of Mississippi Choctaws, but secured the individual signatures of one, W. E. Riley, a relative of his (London's) wife, and an Indian preacher named Ben Hotubbee. London returned to his home at Alma, Arkansas, and some time afterwards received the said contract by mail with the purported signature of either seven or nine individual Mississippi Choctaws. He subsequently delivered the contract to Lindly who gave it to W. S. Field some time in 1898, who in turn delivered it to Chester Howe in

Washington. The contents of the contract, the identity of the Indians signing it, its proper acknowledgment and execution, and what finally became of it, have not been satisfactorily shown by the evidence. There were, however, no tribes, bands, or head men among the Choctaw Indians of Mississippi, and the contract, as signed, was not a band or tribal contract (Rec. 129).

Late in the year 1898, a paper purporting to be a contract with the Mississippi Choctaws was informally left with the Commissioner of Indian Affairs in his office at Washington, but was never filed, and more that a year later was refused approval by the Commissioner because he was of the opinion that he had no authority to do so. Whether the paper was the so-called band contract delivered by Lindly to Howe does not appear, nor was its authenticity satisfactorily established (Rec. 129).

What contractual relationship existed between Lindly, Field, London, James E. Arnold, and Louis P. Hudson has not been shown by the evidence. Lindly and Field had some business connection with Chester Howe, either as attorney and client, or employees of Howe, to which the Mississippi Choctaws were not parties. The record shows that Walter S. Field had no contract, either band or individual, with any Mississippi Choctaws. His name does not appear on any brief filed before any committee of Congress, the Dawes Commission, the Indian Office, or before any court considering the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and no

authority from the Mississippi Choctaws to Field to act in their behalf has been shown, and whatever services he may have performed in their behalf were without their knowledge or acquiescence (Rec. 129, 130). The relationship of London to Lindly was that of an employee engaged to perform specified services, and London was in no way connected with the claim of Chester Howe or Walter S. Field (Rec. 130). The identity of individual claimants living in Mississippi, or elsewhere, if any, who employed said Lindly prior to May 31, 1900, or thereafter, to represent them in their claims to citizenship, and who were subsequently enrolled in the Choctaw Nation, has not been established by the evidence. Nor is the fact that said Lindly employed the intervenors James E. Arnold or Louis P. Hudson to secure contracts for him with individual Mississippi Choctaws, or that such contracts were ever taken by said Arnold or Hudson as agents for said Lindly, Field, or Howe, established by the evidence (Rec. 130).

Walter S. Field was active in interviewing and otherwise impressing upon some individual Congressmen and United States Senators his views as to the necessary and proper legislation for the procurement of the rights of Mississippi Choctaws to citizenship in the Choctaw Nation. The extent and effect, however, of such services do not appear, nor does it appear that the legislation finally enacted was the result of such interviews or services (Rec. 130).

No express copartnership between Field, Lindly, and Howe in which London, James E. Arnold, and Louis P. Hudson were silent partners by oral agree-

ment has been satisfactorily shown by the evidence (Rec. 130):

ARGUMENT.

The Court of Claims has no jurisdiction of these cases, nor is there any liability thereon, for the reasons submitted in our argument of the Winton case, No. 123.

No employment, however, of the appellants, Lindly, Field, and London by the Mississippi Choctaws, either as a class, or as individuals, to act in their behalf has been shown by the evidence, and if they had rendered any service it was merely as volunteers.

No association between the said appellants and Chester Howe in relation to the claim of the said Indians to citizenship in the Choctaw Nation that would authorize their becoming parties to this suit under the act of May 29, 1908, has been established by the record.

If an association between appellants and Howe had been established, it is doubtful whether they were authorized by the jurisdictional act to intervene as parties to the Winton suit. The act appears to have limited such intervention to Vernon, Bounds, and Howe (*Robertson v. Gordon*, 226 U. S. 311, 317).

The means by which appellants attempted to establish their employment by the Mississippi Choctaws and their association with Chester Howe have been severely criticized by the Court of Claims (Rec. 179-182).

If appellants are entitled to intervene, they have totally failed to show any services rendered by them to the Mississippi Choctaws, either as a class or individuals.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

J. J. BECKHAM, APPELLANT,	} No. 127
v.	
JACK AMOS AND OTHERS, KNOWN AS the Mississippi Choctaws.	

APPEAL FROM THE COURT OF CLAIMS.

**BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.**

STATEMENT.

Appellant filed his intervening petition under the act of May 29, 1908 (35 Stat. 457), as an associate of J. S. and T. A. Bounds and William N. Vernon, claiming \$6,000 as the expenses of identification and removal of 16 Mississippi Choctaws, with whom he had contracts, from Mississippi to the Indian Territory and taking care of said Indians after their removal (Rec. 62-65).

In the summer of 1901 J. J. Beckham and R. J. Ellington, residing at Mexia, Texas, entered into a partnership agreement to engage in the business of

securing identification of, and allotment of lands to, Mississippi Choctaws in the Indian Territory. Under the terms of the agreement appellant agreed to furnish the money and Ellington the labor, the proceeds to be equally divided between them (Rec. 126).

After the passage of the act of July 1, 1902, appellant furnished money which was used to assist about 15 Mississippi Choctaws in the State of Mississippi to appear before the Dawes Commission for identification, and in July, 1903, the said Ellington, with funds furnished by appellant, transported to the Choctaw Nation, and subsisted en route, nine Mississippi Choctaws from whom Ellington had previously secured separate contracts. Shortly thereafter Ellington, becoming dissatisfied with the enterprise, conveyed by assignment in writing his entire interest for a nominal consideration to appellant, who, after the arrival of said Indians in the Choctaw Nation furnished them with supplies for a period of about six months. After this the said Indians voluntarily left the care and protection of said appellant and repudiated their contracts with him (Rec. 126, 127).

The Indians were located on segregated lands, not subject to allotment, by Ellington and appellant, who expected to reimburse themselves for the expenses of removal by leasing their allotments. After the assignment by Ellington of his interest to appellant, the improvements were leased by Beckham to third parties for one year, for which he received \$600. The improvements were then turned over to

one Sam Downing, who was to get what he could for them for the benefit of the Indians. Appellant took Downing's note for the consideration, after which he quit the business entirely and did not know whether Downing was ever paid for the improvements. Most of these Indians were afterwards enrolled and allotted by the Dawes Commission (Rec. 127).

ARGUMENT.

This is in effect a suit against nine individual Mississippi Choctaws, with whom appellant had contracts, and whom he caused to be removed at his expense from Mississippi to the Indian Territory.

No association with anyone entitled to sue under the act of May 29, 1908, has been established by the evidence. The claim is also subject to the objections as to jurisdiction and liability discussed in the Winton case, No. 123.

Upon the question of merits there is no evidence that all of the Mississippi Choctaws removed were ever enrolled or received allotments, and there is no evidence as to the identity of those who did receive allotments.

Appellant did them a positive injury by placing them upon segregated lands which were not subject to allotment. They afterwards repudiated their contracts and severed their connections with him. Most of them were afterwards enrolled and allotted by the Dawes Commission. Appellant finally sold out his interest in the enterprise, and has no claim against the Mississippi Choctaws, either as a class or as individuals.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

WILLIAM N. VERNON,

v.

JACK AMOS AND OTHERS, KNOWN AS MIS-
sissippi Choctaws.

} No. 128.

APPEAL FROM THE COURT OF CLAIMS.

**BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.**

STATEMENT.

Appellant filed this intervening suit under the act of May 29, 1908 (35 Stat. 457) against 64 individual Mississippi Choctaws named in the schedule attached to his petition, and claimed the sum of \$15,053.17 as the expenses incurred in removing said Indians from Mississippi to the Indian Territory and subsisting them after removal. The charges against such Indians range from \$10 to \$2,597.65 per capita. The personal expenses of the appellant were \$1,477.47, and were to be prorated among said individual Indians (Rec. 31-41).

William N. Vernon was an attorney at law residing at Rockwall, Texas, when he went to the State of

Mississippi about September 1, 1902, for the purpose of engaging in the business of removing Mississippi Choctaws to the Indian Territory. He secured 60 separate contracts with individual Indians in which they agreed in consideration of services rendered, and to be rendered, by the appellant in establishing their rights as members of the Choctaw Nation, and providing for their removal to the Indian Territory, to pay to him a sum equal to one-half of all the Choctaw property that they might receive as members of that tribe. The said Indians also agreed to lease their allotments to the appellant for a period not to exceed five years, the proceeds to be applied to the payment of the amounts due the appellant under the terms of the contracts (Rec. 122, 123). Prior to September 1, 1902, appellant spent considerable time and some money in ascertaining what lands could be obtained in the Choctaw Nation for the use of the Mississippi Choctaws and purchased improvements on such lands in order that the possessory rights might enable said Indians to obtain allotments on such lands (Rec. 123).

Between September, 1902, and March, 1903, appellant removed 60 Mississippi Choctaws from Mississippi to the Indian Territory, who were finally enrolled as citizens of the Choctaw Nation, paid all of the expenses incident to their removal, and upon their arrival placed them upon the lands to which he had previously secured possessory rights, furnished them with shelter and other necessities, and assisted each of said Indians until their allotments

were obtained. He ceased to remove Indians after the passage of the act of March 3, 1903, owing to a provision therein for the removal of such Indians by the Government. After the lands were allotted, appellant took individual leases from said Indians for terms ranging from two to five years to reimburse himself for expenses incurred in their behalf, and held the same until he was subsequently dispossessed. The amount expended by Vernon in the removal and settlement of such Indians, and the sums received by him as the proceeds of the leases have not been satisfactorily established by the evidence (Rec. 123).

ARGUMENT.

This suit was brought against 64 individual Mississippi Choctaws for sums ranging from \$10 to over \$2,500 per capita. The record shows that he had 60 separate contracts with individual Indians whom he removed to the Indian Territory. The claim is subject to the same objections against jurisdiction and liability raised in the Winton case, No. 123.

Upon the question of merits the record shows that appellant took leases for terms ranging from two to five years to reimburse himself for expenses incurred, and held such leases until he was dispossessed by the Government. Neither the amounts expended in removal and settlement of the Indians nor the proceeds from the leases have been satisfactorily established by the record in the court below. He has, therefore, failed to prove his claim.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

KATIE A. HOWE, EXECUTRIX OF THE ES-
tate of Chester Howe, deceased, appel-
lant,

v.

JACK AMOS AND OTHERS, KNOWN AS THE
Mississippi Choctaws.

No. 129.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.

STATEMENT.

Appellant filed her intervening suit under the act of May 29, 1908 (35 Stat. 457), claiming employment of Chester Howe by the Mississippi Choctaws through an interest in certain contracts taken by the firm of Hudson and Arnold with individual Mississippi Choctaws in Mississippi (Rec. 42-45), and a certain band contract referred to in the testimony of Walter S. Field, one of the intervenors (Rec. 51). The services for which compensation is claimed were rendered in the alleged identification of certain individual Mississippi Choctaws, and in the enactment by Congress of the act of July 1, 1902, and the removal of certain individual Mississippi Choctaws to the Indian Territory (Rec. 42-45).

Chester Howe lived and practiced law for many years in the Territory of Oklahoma. In 1896 he removed his law office and business to Washington, D. C., where he continued to live until his death on October 1, 1908, while on a visit to Oklahoma.

In the early part of 1899 said Howe, by an oral agreement with Louis P. Hudson, acquired an undivided one-third interest in approximately 465 contracts with individual Mississippi Choctaws taken by the firm of Hudson and Arnold prior to the dissolution of said firm in August, 1901. The purpose of these contracts was to secure the rights of said Mississippi Choctaws to allotments of Choctaw-Chickasaw tribal lands, and to remove said Indians to the Indian Territory (Rec. 116). Less than forty of the total number of persons purporting to have signed said contracts were finally enrolled (Rec. 119).

The services to be rendered by said Howe were legal services before Congress and the Interior Department in representing and protecting the interests of said Indians and establishing their rights in and to lands in the Choctaw Nation (Rec. 116).

Large sums of money were borrowed by said Arnold and Hudson from various persons on account of said contracts with individual Mississippi Choctaws, the amount of which is not disclosed, and for which the said Hudson and Arnold failed to account to said Howe (Rec. 116, 117). Fees in excess of \$30,000 were also collected by said Hudson and Arnold under said contracts from individual claimants (Rec. 119). Because of his failure to receive his share of said moneys, Howe became greatly dissatisfied with the

Mississippi Choctaw business, and in the spring of 1902 decided to withdraw and so notified his correspondents. Thereupon said Arnold went to Washington and on May 12, 1902, procured the further assistance of said Howe by the acknowledgment in writing of the agreement previously made by Hudson with said Howe by which the latter was to receive one-third of the fees in the Hudson and Arnold contracts, and by signing an agreement authorizing the employment of J. H. Ralston, of the firm of Ralston & Siddons, to assist said Howe. In May, 1902, Howe employed the firm of Ralston & Siddons to assist him in securing the rights of said Mississippi Choctaws upon a contingent fee of \$5,000, to be paid in sums of \$250 or more by said Howe, out of his own fees, as fast as the same could be collected, the amounts thus collected to be evenly divided between said firm of Ralston & Siddons and said Howe until the fee should be paid (Rec. 117).

There were no tribes, bands, or headmen among the Choctaw Indians of Mississippi and the contract claimed to have been made between M. M. Lindly and certain bands of Mississippi Choctaws and delivered by said Lindly to Walter S. Field was not a band or tribal contract (Rec. 129).

Between December, 1900, and July 1, 1902, said Howe was actively engaged in pressing the claims of Mississippi Choctaws, with whom James E. Arnold and others had individual contracts, upon individual Congressmen and Senators, the subcommittee on Indian Affairs of the House of Representatives, the officials of the Indian Office, and the Secretary of the

Interior. It is not established by the evidence, however, that the legal services rendered by Howe were effective in establishing the claim of said Mississippi Choctaws to citizenship in the Choctaw Nation, nor was the enactment of the legislation under which the Mississippi Choctaws received allotments of Choctaw-Chickasaw tribal lands the result of his professional services (Rec. 117).

Chester Howe was not instrumental in the removal of a single Mississippi Choctaw from Mississippi to the Indian Territory, as claimed in his petition (Rec. 126).

ARGUMENT.

This suit was brought under the authority of the act of May 29, 1908, by virtue of a one-third interest obtained by Chester Howe in approximately 465 contracts taken by Hudson and Arnold with individual Mississippi Choctaw claimants, of whom less than 40 were enrolled and received allotments. The question of jurisdiction and liability applicable to this case are discussed in our argument of the Winton case, No. 123.

The Court of Claims has found that James E. Arnold failed to establish his claim (Rec. 120, 121). The lower court also held that no contractual relations existed between the Mississippi Choctaws and Chester Howe, but that he was simply an employe of the firm of Hudson and Arnold retained for the performance of legal services at a stipulated compensation, and that the said Chester Howe never before this suit regarded the Mississippi Choctaws as liable for his fees (Rec. 177-178). The lower court also held that the Arnold

claim for removal of individual Indians could not be recognized, and that Arnold had been well paid for his services and was amply able to have paid Howe for any legal services rendered by him (Rec. 179).

The band contract under which appellant also claims never had any existence in fact, and was never mentioned in the original petition prepared by Howe before his death, or in the amended petition prepared by his executrix, and was only set up in the second amended petition of appellant (Rec. 50, 51). Concerning this alleged band contract and the efforts of Lindly, Field, and London to establish an association with Chester Howe, then deceased, the Court of Claims was very severe in its strictures (Rec. 179-182).

If appellant had a right to institute this suit and the Court of Claims had jurisdiction to entertain it, no recovery could be obtained because appellant's decedent, Chester Howe, according to the findings of the lower court, had rendered no services to the Mississippi Choctaws.

CONCLUSION.

For the reasons stated in the foregoing briefs, it is respectfully submitted that the judgment of the Court of Claims dismissing the intervening petitions of the said appellants should be affirmed.

ALEX. C. KING,

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Attorney.